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IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted] 192

EVELYN WALKER,
Petitioner,

v.

THE OHIO RIVER COMPANY, a corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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INDEX.

	PAGE
Counter-Statement of Question Presented for Review	1
Counter-Statement of the Case	1
Reasons in Opposition to the Issuance of a Writ of Certiorari	4
The decision of the Supreme Court of Pennsylvania in the instant case, having been based solely upon the doctrine of collateral estoppel, rests upon an independent and adequate state law ground, and no special or important reasons exist for a review of that decision by this Honorable Court on writ of certiorari	4
I. The decisions of the State Courts of Pennsylvania in the instant case were based upon the doctrine of collateral estoppel and not *res judicata*, as suggested by petitioner in her Brief	4
II. The decisions of the State Courts of Pennsylvania in the instant case rest upon an adequate and independent state law ground, and no federal question has been raised or decided	6
III. Since the application of the doctrine of collateral estoppel is based upon a sound policy which in no way conflicts with the policy of maritime law, no special or compelling reasons exist to warrant a review of this case	8
Conclusion	10

Table of Citations.

Cases.

The City and County of San Francisco v. Itsell, 133 U. S. 65, 33 L. Ed. 570 (1890)	7, 8
Eustis v. Bolles, 150 U. S. 361, 37 L. Ed. 1111 (1893)	6
Fitzgerald v. United States Lines, 374 U. S. 16, 10 L. Ed. 2d 720 (1963)	9

PAGE

Herb v. Pitcairn, 324 U. S. 117, 89 L. Ed. 789 (1945) .. 6, 7
John I. Adams & Co. v. The Board of Liquidation of the State of Louisiana, 144 U. S. 651, 36 L. Ed. 578 (1892) 8
Musgrave v. Bronx Towing Line, Inc., 219 F. Supp. 918 (S. D. N. Y. 1963) 9
Pilgrim Food Products Co. v. Filler Products, Inc., 393 Pa. 418, 143 A. 2d 47 (1958) 7
Tillman v. National City Bank of New York, 118 F. 2d 631 (2d Cir. 1941), *cert. denied*, 314 U. S. 650, 86 L. Ed. 521 (1941) 8

Statute.

The Jones Act, Act of March 4, 1915, c. 153, § 20, 38 Stat. 1185; June 5, 1920, c. 250, §33, 41 Stat. 1007; 46 U.S.C.A. § 688 (1958) 1, 2, 4, 5, 6, 9, 10

Miscellaneous.

1 Edelman, *Maritime Injury and Death*, 9 (1960) 6
1 Norris, *The Law of Seamen*, § 556 at 618 (2d ed. 1962) 6

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No. 1530

EVELYN WALKER,

Petitioner,

v.

THE OHIO RIVER COMPANY, a corporation,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Counter-Statement of Question Presented for Review

Was the petitioner's suit, based upon the Jones Act and the admiralty doctrine of unseaworthiness, properly dismissed and such dismissal properly affirmed by the Supreme Court of Pennsylvania upon the ground of collateral estoppel, when the basic fact essential to any recovery therein—namely the occurrence of a specific shipboard accident—had already been litigated and decided adversely to petitioner in a maintenance and cure action in a Federal District Court based upon the very same alleged accident.

Counter-Statement of the Case

The present action, which was commenced (A. 11) by plaintiff (hereinafter referred to as "petitioner") on Sep-

tember 6, 1963, in the Court of Common Pleas of Allegheny County, Pennsylvania, sets forth a cause of action (A. 15-19) for alleged personal injuries based upon the Jones Act (46 U. S. C. A. Section 688)[1] and the admiralty doctrine of unseaworthiness, and also a cause of action (A. 19) for maintenance and cure based upon the general maritime laws of the United States. Both causes of action are based upon one and the same accident which allegedly occurred in October of 1962 while petitioner was employed as a seawoman aboard the respondent's motor vessel Robert P. Tibolt (Petitioner's Complaint herein, A. 16).

In addition to the present action, petitioner herein had also filed a separate action for maintenance and cure against respondent in the United States District Court for the Western District of Pennsylvania, at Admiralty No. 64-5, which was also based upon the same alleged accident aboard the motor vessel Tibolt in October of 1962.[2]

On February 2, 1965, after a non-jury trial on the merits of petitioner's maintenance and cure action at Admiralty No. 64-5, the United States District Court for the Western District of Pennsylvania, speaking through His Honor, Judge Joseph P. Willson, filed an Opinion (A. 25-32) and Order of Court (A. 32) directing the Clerk to enter judgment in favor of respondent herein for the reason that "[b]ased upon all the evidence this Court is unable to conclude that libellant [petitioner herein] suffered any injury on board respondent's [also respondent herein] motor vessel Tibolt on October 19, 1962". (A. 32).

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[1] Act of March 4, 1915, c. 153, § 20, 38 Stat. 1185; June 5, 1920, c. 250, § 33, 41 Stat. 1007.

[2] Although petitioner herein also filed a separate Jones Act suit in the United States District Court for the Western District of Pennsylvania, which was transferred to the Federal District Court in Cincinnati, Ohio, and then dismissed without prejudice by petitioner, it is believed that the aforesaid action is irrelevant to the issue presented for review in the instant case.

On March 18, 1966, the United States Court of Appeals for the Third Circuit, in a *Per Curiam* Opinion, affirmed the judgment of the District Court in favor of respondent herein.[3] No further appellate action was taken by petitioner from the decision of the United States Court of Appeals for the Third Circuit.

After the decision in the Federal Court with respect to petitioner's action for maintenance and cure had become final, respondent herein presented to the Court of Common Pleas of Allegheny County (hereinafter referred to as the "Common Pleas Court") a Motion for Summary Judgment (A. 20), requesting that the Court dismiss both the First and Second Causes of Action in the Complaint filed therein.

On August 8, 1966 (A. 13), a Consent Order was filed dismissing the Second Cause of Action (seeking damages for maintenance and cure) in the Complaint filed in the instant case because it was identical with the cause of action for maintenance and cure which had already been adjudicated in the prior Federal Court action between the parties.

Thereafter, on January 24, 1967 (A. 13), after oral argument, the Common Pleas Court, relying solely and clearly upon the doctrine of collateral estoppel, filed an Opinion (A. 21-24) and Order of Court (A. 25), granting respondent's Motion with respect to the First Cause of Action in the Complaint filed herein, which sought damages under the Jones Act and the admiralty doctrine of unseaworthiness.

On March 15, 1968, the Supreme Court of Pennsylvania, in a *Per Curiam* Opinion[4] (A. 15), affirmed the judgment of

[3] *Walker v. The Ohio River Company*, 358 F. 2d 733 (3rd Cir. 1966).

[4] The *Per Curiam* Opinion of the Supreme Court of Pennsylvania is reported both at 428 Pa. 552 (1968) and at 239 A. 2d 206 (1968).

the Common Pleas Court on the Opinion of Judge Walter P. Smart (A. 21-24). It is this decision of the Supreme Court of Pennsylvania which petitioner now seeks to have reviewed by this Honorable Court on writ of certiorari.

Reasons in Opposition to the Issuance of a Writ of Certiorari

The decision of the Supreme Court of Pennsylvania in the instant case, having been based solely upon the doctrine of collateral estoppel, rests upon an independent and adequate state law ground, and no special or important reasons exist for a review of that decision by this Honorable Court on writ of certiorari.

I. The decisions of the State Courts of Pennsylvania in the instant case were based upon the doctrine of collateral estoppel and not res judicata, as suggested by petitioner in her Brief.

Petitioner's basic argument in the instant case is that the State Courts of Pennsylvania have relied upon the doctrine of res judicata to dismiss her action under the Jones Act (46 U. S. C. A. Section 688) and the admiralty doctrine of unseaworthiness, and that the State Courts have, therefore, erroneously failed to recognize the distinction between a cause of action under the Jones Act and a cause of action for maintenance and cure.

It is submitted that petitioner's argument in this regard simply is not accurate.

To begin with, it is clear that the Common Pleas Court expressly recognized the distinction between a cause of action for maintenance and cure and a cause of action under the Jones Act and the admiralty doctrine of unseaworthiness. In this regard, the Common Pleas Court, in its Opinion granting respondent's Motion for Summary Judgment, stated as follows:

> "The plaintiff's [petitioner herein] cause of action for maintenance and cure, which has been decided adversely to the plaintiff in the Federal Court action, is not strictly identical with plaintiff's first cause of action herein for damages under the Jones Act and/or the Admiralty doctrine of seaworthiness" (A. 23).

Moreover, it is equally clear that the decisions of the State Courts of Pennsylvania dismissing petitioner's action under the Jones Act and the admiralty doctrine of unseaworthiness were not based upon the doctrine of res judicata, as suggested by petitioner, but rather were based solely and correctly upon the doctrine of collateral estoppel. Petitioner's suit in the State Courts of Pennsylvania for damages under the Jones Act and the admiralty doctrine of unseaworthiness was based upon the same shipboard accident which was the basis of her previously litigated action for maintenance and cure in the Federal District Court. However, in the aforesaid Federal Court action, it had been determined, as a matter of fact and law, that petitioner's alleged shipboard accident had not occurred (A. 25-32). Accordingly, the Common Pleas Court correctly observed that "plaintiff herein has already had her day in Court with respect to that issue of fact and, under *the doctrine of collateral estoppel,* plaintiff is precluded from relitigating that same issue in this Court." [Emphasis added.] (A. 24).

In the *Per Curiam* Opinion (A. 15) affirming the judgment of the Common Pleas Court, the Supreme Court of Pennsylvania adopted the above-quoted Opinion by Judge Smart and, thus, also grounded the disposition of the case on appeal upon the doctrine of collateral estoppel.

Petitioner's argument to the effect that the issue of negligence was not determined in the Federal Court action for

maintenance and cure is beside the point. Although a seaman need not prove negligence or fault on the part of a shipowner-employer to recover for maintenance and cure, nevertheless, it is clear that a seaman who claims or alleges that he or she has sustained an injury aboard a vessel must prove, by a fair preponderance of the credible evidence, that such injury did in fact occur. 1 Edelman, *Maritime Injury and Death*, 9 (1960); 1 Norris, *The Law of Seamen* § 556 at 618 (2d ed. 1962). However, this fact was resolved against petitioner in her Federal Court action for maintenance and cure and, under the doctrine of collateral estoppel, she was precluded from relitigating that same fact issue in her action under the Jones Act.

II. The decisions of the State Court of Pennsylvania in the instant case rest upon an adequate and independent state law ground, and no federal question has been raised or decided.

It is believed clear that the decisions of the State Courts of Pennsylvania in the instant case, having been based solely and correctly upon the doctrine of collateral estoppel, rest upon an independent and adequate state ground, and that no federal question has either been presented or decided in the instant case.

In this regard, this Honorable Court has clearly stated that it will not review the judgment of a state court which rests upon an adequate and independent state ground, even though federal rights may be claimed in the same state court action. *Herb v. Pitcairn*, 324 U. S. 117, 125, 89 L. Ed. 789, 794 (1945); *Eustis v. Bolles*, 150 U. S. 361, 367, 37 L. Ed. 1111, 1112 (1893).

In the case of *Herb v. Pitcairn, supra*, this Honorable Court, speaking through His Honor, Mr. Justice Jackson, stated as follows:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. [Citations omitted.] The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and Federal judicial systems and in the limitations of our own jurisdiction." 324 U. S. at 125; 89 L. Ed at 794.

In the instant case, there can be no doubt that the Common Pleas Court and the Supreme Court of Pennsylvania both relied upon a state law ground in rendering judgment against the petitioner herein, for the application of the doctrine of collateral estoppel, as set forth in the decision of the Supreme Court of Pennsylvania in the case of *Pilgrim Food Products Co. v. Filler Products, Inc.*[5] provided the sole basis for the determination made by both Courts.

In this regard, this Honorable Court has recognized specifically that the application by a state court of either the doctrine of collateral estoppel or the doctrine of res judicata, although the latter doctrine was not applied here, does not, in and of itself, raise a federal question, but rather, involves only a question of general or state law. *John I. Adams & Co. v. The Board of Liquidation of the State of Louisiana,* 144 U. S. 651, 653, 36 L. Ed. 578, 579 (1892); and *The City and County of San Francisco v. Itsell,* 133 U. S. 65, 67, 33 L. Ed. 570, 571 (1890). In the *Itsell* case, *supra,* this Honorable Court, in an opinion by Mr. Justice Gray, stated as follows:

> "In the present case, the record of the pleadings, findings of fact and judgment shows that it was unnecessary for that court to decide, and its opinion filed in the case and copied in the record shows that it did not

[5] 393 Pa. 418, 143 A. 2d 47 (1958).

> decide, any question against the plaintiff in error, except the issue whether the former judgment rendered against it and in favor of the grantor of the defendants in error was a bar to this action. That was a question of general law only, in no wise depending upon the Constitution, treaties or statutes of the United States." 133 U. S. at 67, 33 L. Ed. at 571.

The determination by the Supreme Court of Pennsylvania in the instant case that the doctrine of collateral estoppel precludes petitioner from relitigating in a State Court action *factual matters* once fully litigated by her in a prior Federal Court action, is a determination wholly independent of the federal character of the rights asserted to arise out of those factual matters. Thus, it is respectfully submitted that no federal question has been raised or decided herein for review by this Honorable Court.

III. Since the application of the doctrine of collateral estoppel is based upon a sound policy which in no way conflicts with the policy of maritime law, no special or compelling reasons exist to warrant a review of this case.

The doctrine of collateral estoppel is a generally recognized principle of law applied by both federal and state forums. As stated in the case of *Tillman v. National City Bank of New York,* 118 F. 2d 631, 634 (2d Cir. 1941), *cert. denied,* 314 U. S. 650, 86 L. Ed. 521 (1941), this doctrine is a "reasonable measure calculated to save individuals and courts from the waste and burden of relitigating old issues."

Moreover, it is submitted that there is no counter-balancing policy of maritime law which would justify carving out an exception to the doctrine of collateral estoppel with respect to maritime claims. To the contrary, this Honorable Court has recognized the application of the doctrine of collateral estoppel in such cases.

In this regard, this Honorable Court, in the case of *Fitzgerald v. United States Lines,* 374 U. S. 16, 10 L. Ed. 2d 720 (1963), reiterated the well established rule that actions based upon the Jones Act, the admiralty doctrine of unseaworthiness and the doctrine of maintenance and cure could be joined in one complaint. Moreover, this Honorable Court then held that when such claims were so joined in one complaint, all of them were to be submitted to the same trier of fact. 374 U. S. at 21, 10 L. Ed. 2d at 724. It is believed especially significant that, in considering the difficulties which are created when claims under the Jones Act and the admiralty doctrine of unseaworthiness are tried separately from a companion claim for maintenance and cure, this Honorable Court gave particular recognition to the difficulties created thereby "in applying [the] doctrines of res judicata and collateral estoppel, * * *." 374 U. S. at 19; 10 L. Ed. 2d at 723.

With respect to matters of public policy, petitioner, at page 9 of her Brief, makes brief mention of a need for uniformity in the application of the federal maritime law. In this regard, respondent submits that the State Courts of Pennsylvania, in applying the doctrine of collateral estoppel in the instant case, have reached precisely the same result as had a United States District Court for the Southern District of New York when presented with the same facts in a federal forum. In the case of *Musgrave v. Bronx Towing Line, Inc.,* 219 F. Supp. 918 (S. D. N. Y. 1963), the Court therein granted summary judgment against plaintiff upon his Jones Act and unseaworthiness claim on the basis of collateral estoppel, for the reason that the accident alleged by plaintiff as a basis for recovery therein had been previously litigated in a maintenance and cure action brought by the plaintiff in the Muncipal Court of the City of New York. Thus, in the *Musgrave* case, *supra,*

a United States District Court, applying the doctrine of collateral estoppel as a matter of the general law of that federal forum, reached precisely the same result as did the Supreme Court of Pennsylvania in applying the doctrine of collateral estoppel as a matter of state law in the instant case.

Conclusion

In an effort to raise a federal question in the instant case, petitioner would have this Honorable Court believe that the State Courts of Pennsylvania have misconstrued her federal rights as a seawoman by equating her cause of action under the Jones Act with her cause of action for maintenance and cure. To the contrary, the Record in this case clearly shows that the Common Pleas Court expressly recognized and considered the distinct nature of these two causes of action and the fact that the doctrine of res judicata was inapplicable. However, the Common Pleas Court also determined that an identity of causes of action was immaterial to a proper application of the doctrine of collateral estoppel, which precluded petitioner herein from relitigating in her Jones suit an issue of fact, *i.e.*, the occurrence of her alleged accident, which had already been adjudicated adversely to her in a Federal Court action for maintenance and cure based upon the same alleged shipboard accident.

It is submitted that the decisions of the State Courts do not in any way present a federal question for review by this Honorable Court. To the contrary, the decisions of the State Courts of Pennsylvania in the instant case represent nothing more than a correct application of the doctrine of collateral estoppel to a given factual and legal situation which, only by chance, happened to involve a claim based upon a federal statute.

Accordingly, respondent respectfully requests that the instant Petition for Writ of Certiorari to the Supreme Court of Pennsylvania be denied.

Respectfully submitted,

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